



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2016-0559]

RIN 1625-AA08

Special Local Regulations; Marine Events held in the Sector Long Island Sound Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three special local regulations for three separate marine events within the Coast Guard Sector Long Island Sound (LIS) Captain of the Port (COTP) Zone. This temporary final rule is necessary to provide for the safety of life on navigable waters during these events. Entry into, transit through, mooring, or anchoring within these regulated areas is prohibited unless authorized by COTP Sector Long Island Sound.

DATES: This rule is effective without actual notice from 12:01 a.m. on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until 11:00 a.m. on August 6, 2016. For the purposes of enforcement, actual notice will be used from the date the rule was signed, June 23, 2016, until **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0559 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Petty Officer Jay TerVeen, Prevention Department, Coast Guard Sector Long Island Sound, telephone (203) 468-4446, e-mail Jay.C.TerVeen@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
LIS	Long Island Sound
NPRM	Notice of Proposed Rulemaking
NAD 83	North American Datum 1983

II. Background Information and Regulatory History

This rulemaking establishes three special local regulations for two swim events and one fireworks display. Each event and its corresponding regulatory history are discussed below.

The Jones Beach State Park Fireworks is a recurring marine event with regulatory history. This recurring event is codified in Table 1 to 33 CFR 165.151 (7.19). The Coast Guard is using a Special Local Regulation for this event due to a determination that a safety zone will be insufficient to mitigate the event's extra and unusual hazards this year.

The Mystic Sharkfest Swim is a recurring marine event with regulatory history. A special local regulation was established in 2015 for the Mystic Sharkfest Swim event when the Coast Guard issued a temporary rule entitled, "Special Local Regulation; Mystic Sharkfest Swim; Mystic River; Mystic, CT."

Island Beach Two Mile Swim is a recurring marine event with regulatory history. A special local regulation was established for this event on July 29, 2015 via a temporary final rule entitled, "Special Local Regulations; Marine Events held in the Sector Long Island Sound Captain

of the Port Zone.” This rule was published on August 13, 2015 in the Federal Register (80 FR 48436).

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable. There is insufficient time to publish an NPRM, take public comments, and issue a final rule before these events take place. Thus, waiting for a comment period to run would inhibit the Coast Guard’s mission to keep the ports and waterways safe.

Under 5 U.S.C. 553(d)(3), and for the same reasons stated in the preceding paragraph, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The legal basis for this temporary rule is 33 U.S.C. 1233.

The COTP Sector LIS has determined that the special local regulations established by this temporary final rule are necessary to provide for the safety of life on navigable waterways during these events.

IV. Discussion of the Rule

This rule establishes three special local regulations for two swim events and one fireworks show. The locations of these regulated areas are as follows:

Special Local Regulations

1	Jones Beach Fireworks Display	Location: There will be three areas created for the special local regulation. The first area, "No Entry Area", is on the navigable waterway located along the south shore of Jones Beach State Park. The second area, "Slow/No Wake Area", is located on the navigable waterway between Meadowbrook State Parkway and Wantagh State Parkway. The third area, "No Southbound Traffic Area", in the navigable waters of Zach's Bay.
2	Mystic Sharkfest Swim	Location: All waters of Mystic River off Mystic, CT contained within the following area; beginning at a point on land in position at 41°21'41" N, 071°58'01" W; then south-west across Mystic River to a point on land in position at 41°21'36" N, 071°58'05" W near Pearl Street then south-east along the shoreline to a point on land in position at 41°21'31" N, 071°58'02" W near Park Place; then south-west along the shoreline to a point on land in position at 41°21'27" N, 071°58'07" W near Gravel Street; then south along the shoreline to a point on land in position 41°21'10" N, 071°58'14" W; then east across Mystic River to a point on land in position 41°21'09"N, 071°58'11"W; then north along the shoreline to a point on land in position 41°21'21" N, 071°58'02" W , then east along the shoreline to a point on land in position 41°21'25" N, 071°57'53" W near Holmes Street, then north along the shoreline to a point on land in position 41°21'38" N, 071°57'53" W near the Mystic Seaport Museum and then northwest along the shoreline back to point of origin (NAD 83)
3	Island Beach Two Mile Swim	Location: All waters of Captain Harbor between Little Captain's Island and Bower's Island that are located within the box formed by connecting four points in the following positions. Beginning at 40°59'23.35" N 073°36'42.05" W, then northwest to 40°59'51.04" N 073°37'57.32" W, then southwest to 40°59'45.17" N 073°38'01.18" W, then southeast to 40°59'17.38" N 073°36'45.90" W, then northeast to the beginning point at 40°59'23.35" N 073°36'42.05" W (NAD 83).

This rule establishes additional vessel movement rules within areas specifically under the jurisdiction of the special local regulations during the periods of enforcement unless authorized by the COTP or designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. The Coast Guard determined that this rulemaking is not a significant regulatory action for the following reasons: 1) the enforcement of these regulated areas will be relatively short in duration, 2) persons or vessels desiring entry into the “No Entry” areas or a deviance from the stipulations within the “Slow/No Wake Areas” may be authorized to do so by the COTP Sector Long Island Sound or designated representative, may do so with permission from the COTP Sector LIS or a designated representative; 3) vessels can operate within the regulated area provided they do so in accordance with the regulation and 4) before the effective period, public notifications will be made to local

mariners through appropriate means, which may include the Local Notice to Mariners as well as Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit these regulated areas may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast

Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act

addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This temporary rule involves the establishment of three regulated areas. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements,
Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

2. Add §100.T01-0559 to read as follows:

§100.T01-0559 Special Local Regulations; Marine Events held in the Sector Long Island Sound Captain of the Port Zone.

- (a) Location. This section will be enforced at the locations listed for each event in the Table 1 to §100.T01-0559.
- (b) Enforcement Period. This rule will be enforced on the dates and times listed for each event in Table 1 to §100.T01-0559.
- (c) Definitions. The following definitions apply to this section: A “designated representative” is any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. “Official patrol vessels” may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

- (d) Regulations. (1) The general regulations contained in 33 CFR 100.35 apply.
- (2) Operators of vessels desiring to deviate from these regulations should contact the COTP Sector Long Island Sound at (203)468-4401 (Sector LIS command center) or the designated representative via VHF channel 16 to obtain permission to do so.
- (3) Any vessel given permission to deviate from these regulations must comply with all directions given to them by the COTP Sector Long Island Sound, or the designated on-scene representative.
- (4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

Table 1 to §100.T01-0559

Special Local Regulations

1	Jones Beach Fireworks Display	<ul style="list-style-type: none"> • Date: July 4, 2016. • Rain Date: July 5, 2016. • Time: 9:00 p.m. to 10:25 p.m. • Location: “No Entry Area”: [Barge Location] “Slow / No Wake Area”: All navigable waters between Meadowbrook State Parkway and Wantagh State Parkway and contained within the following area. Beginning in approximate position 40°35’49.01”N 73°32’33.63”W then north along the Meadowbrook State Parkway to its intersection with Merrick Road in approximate position 40°39’14.00”N 73°34’00.76”W then east along Merrick Road to its intersection with Wantagh State Parkway in approximate position 40°39’51.32”N 73°30’43.36”W then south along the Wantagh State Parkway to its intersection with Ocean Parkway in approximate position 40°35’47.30”N 73°30’29.17”W then west along Ocean Parkway to its intersection with Meadowbrook State Parkway at the point of origin in approximate position 40°35’49.01”N 73°32’33.63”W. “No Southbound Traffic Area”: All navigable waters of Zach’s Bay south of the line connecting a point near the western entrance to Zach’s Bay in approximate position 40°36’29.20”N, 073°29’22.88”W and a point near the eastern entrance of Zach’s Bay in approximate position 40°36’16.53”N, 073°28’57.26”W.
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2	Mystic Sharkfest Swim	<ul style="list-style-type: none"> • Date: July 9, 2016 • Time: 7:30 a.m. to 10:00 a.m. • Location: “All waters of Mystic River off Mystic, CT contained within the following area; beginning at a point on land in position at 41°21’41” N, 071°58’01” W; then south-west across Mystic River to a point on land in position at 41°21’36” N, 071°58’05” W near Pearl Street then south-east along the shoreline to a point on land in position at 41°21’31” N, 071°58’02” W near Park Place; then south-west along the shoreline to a point on land in position at 41°21’27” N, 071°58’07” W near Gravel Street; then south along the shoreline to a point on land in position 41°21’10” N, 071°58’14” W; then east across Mystic River to a point on land in position 41°21’09”N, 071°58’11”W; then north along the shoreline to a point on land in position 41°21’21” N, 071°58’02” W , then east along the shoreline to a point on land in position 41°21’25” N, 071°57’53” W near Holmes Street, then north along the shoreline to a point on land in position 41°21’38” N, 071°57’53” W near the Mystic Seaport Museum and then northwest along the shoreline back to point of origin” (NAD 83). • Additional Stipulations: (1) In accordance with the general regulations found in section 100.35 of this part, we are requiring non-event vessels transiting through the area during the enforcement period to travel at no wake speeds or 6 knots, whichever is slower and that vessels shall not block or impede the transit of event participants, event safety vessels or official patrol vessels in the regulated area unless authorized by the Captain of the Port (COTP) or designated representatives. (2) All persons transiting through the area shall maintain a minimum distance of 100 feet from the swimmers.
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3	Island Beach Two Mile Swim	<ul style="list-style-type: none"> • Date: August 3, 2016 • Time: 7:30 a.m. to 11:00 a.m. • Location: The following area is a safety zone: All waters of Captain Harbor between Little Captain's Island and Bower's Island that are located within the box formed by connecting four points in the following positions. Beginning at 40°59'23.35" N 073°36'42.05" W, then northwest to 40°59'51.04" N 073°37'57.32" W, then southwest to 40°59'45.17" N 073°38'01.18" W, then southeast to 40°59'17.38" N 073°36'45.90" W, then northeast to the beginning point at 40°59'23.35" N 073°36'42.05" W (NAD 83). • Additional stipulations: All persons transiting through the area shall maintain a minimum distance of 100 yards from the swimmers.
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Dated: June 23, 2016

K.B. Reed
Commander, U. S. Coast Guard,
Acting Captain of the Port Sector Long Island Sound

[FR Doc. 2016-16518 Filed: 7/11/2016 8:45 am; Publication Date: 7/12/2016]